

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

RHONDA MCGOWAN, ET AL.,

Plaintiffs,

No. 16-13216

v.

District Judge Terrence G. Berg  
Magistrate Judge R. Steven Whalen

KROGER DISTRICT I,

Defendant.

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**ORDER**

Before the Court is Plaintiffs' motion to compel discovery [Doc. #78], in which they seek an order compelling Defendant to respond to their Request for Production of Documents and Interrogatories.

There are several reasons why this motion should be denied. First, discovery closed on October 13, 2017, and Defendant filed a motion for summary judgment on November 14, 2017. Plaintiffs filed the present motion on December 19, 2017, making it subject to denial as being grossly untimely. *See Suntrust Bank v. Blue Water Fiber, L.P.*, 210, F.R.D. 196 (E.D. Mich. 2001); *AVKO Educational Research Foundation v. Morrow*, 2013 WL 1395824 at \*11 (E.D. Mich. 2013). Also, Plaintiffs failed to comply with Fed.R.Civ.P. 37(a)(1) and E.D. Mich. L.R. 7.1, which requires a certification that the moving party held a conference and/or sought concurrence of the opposing party.

Finally, the motion fails on its merits. As to the document requests, that issue was resolved by stipulation filed on September 12, 2017 [Doc. #54], which withdrew

Plaintiffs' previous motion to compel.<sup>1</sup> As to the interrogatories, I have reviewed the Defendant's responses, attached to its response as Exhibit 5 [Doc. #80], and, while Defendant interposed objections to each disputed interrogatory, nonetheless provided responsive answers subject to those objections.<sup>2</sup>

For these reasons, Plaintiffs' motion to compel [Doc. #78] is DENIED.

Pursuant to Fed.R.Civ.P. 37(a)(5)(B), Plaintiffs must show cause in writing, no later than 14 days from the date of this Order, why they should not pay the Defendant its reasonable expenses incurred in opposing this motion, including attorney's fees.

IT IS SO ORDERED.

Dated: January 2, 2018

s/R. Steven Whalen  
R. STEVEN WHALEN  
U.S. MAGISTRATE JUDGE

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<sup>1</sup> The stipulated order states:

“This matter came before the Court upon agreement of the parties that Defendant Kroger Co. of Michigan 709 has responded to Plaintiffs' First Request for Production of Documents to Defendant, that Plaintiffs' Motion to Compel Kroger to Produce Records of Production has therefore been resolved, and that the Motion should be withdrawn.”

<sup>2</sup> Plaintiffs claim that Defendant failed to respond to Interrogatory No. 6. That may be because there is no Interrogatory No. 6.

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**CERTIFICATE OF SERVICE**

I hereby certify on January 2, 2018 that I electronically filed the foregoing paper with the Clerk of the Court sending notification of such filing to all counsel registered electronically. I hereby certify that a copy of this paper was mailed to non-registered ECF participants on January 2, 2018.

s/Carolyn M. Ciesla  
Case Manager for the  
Honorable R. Steven Whalen